IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 812 of 2001

in

SPECIAL CIVIL APPLICATIONNo 8388 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA MANILAL KHAGRAM
Versus
COLLECTOR

Appearance:
1. LETTERS PATENT APPEAL No. 812 of 2001
MR SURESH M SHAH for Appellant No.
MR MEHUL S SHAH for Appellant No.
..... for Respondent No. 1
MR JAYANT PATEL for Respondent No. 2-13

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. This Letters Patent Appeal is filed against the interim order made by the learned Single Judge on 13.8.2001. The petitioner filed Special Civil Application for the following reliefs :

a) To issue a Writ of Mandamus and/or a writ, order or Direction in the nature of Mandamus, directing the respondent no. 1 herein to produce the order dated 1st June, 2000 passed by him and after its production, be pleased to quash and set aside the same;

and

b) To stay the operation and implementation of the order dated 1st June, 2000 passed by the respondent no. 1 herein during the pendency and final hearing of this Special Civil Application.

The impugned order is at page 53 of the appeal memo. It seems that the original order was passed imposing certain conditions. With regard to the subject matter a Civil Suit being Regular Civil Suit no. 27 of 2000 was preferred in which on 27.3.2000 the learned Civil Judge (J.D.), Manavdar made an order restraining the contesting respondents herein or anyone else from making construction of any nature whatsoever etc. till the disposal of the suit. It seems that initially the order dated 21.4.98 was made by the Collector addressed to the Chief Officer for constructing the cabin leaving a distance of 12 mtrs. open from the centre of the road. However, by the letter dated 1/5.6.00, it was reduced to 10 mtrs. This reduction from 12 mtrs. to 10 mtrs. was the subject matter of the petition. It is also conveyed to us by the learned advocates at Bar that against the order made by the learned Civil Judge (J.D.), on 27.3.00, an appeal is already preferred and is pending before the appellate court being Civil Misc. Appeal no. 26 of 2000.

2. Mr.Shah, the learned counsel appearing for the appellant submitted that he is aggrieved because of the later part of the order made in para 2. He submitted that his petition was for the purpose of not allowing the

respondents to change the distance from 12 mtrs. to 10 mtrs. Even if his petition would have been dismissed, the relief which is granted by the order could not have been granted in his petition. Mr.Patel tried to justify the order and tried to submit that the court could have passed the order. We are of the view that once a civil court has taken cognizance of the matter and has made the order and the appeal is pending, it would be appropriate for the parties to move the appellate court for modification of the order in so far as the construction is concerned. Under the circumstances, we partly allow this appeal by directing as under :

3. Having regard to the fact that there is no dispute between Manavadar Municipality and the Collector, Junagadh about the impugned sale transactions, the court finds no reason to grant any interim relief to restrain respondent nos. 2 & 3 from putting up construction of the cabins.

4. The later part of para 2 and para 3 of the impugned order is quashed and set aside. At the same time, in view of the disputes, we direct the lower appellate court hearing the Civil Misc. Appeal No.26 of 2000 to dispose of the appeal on or before 31st October, 2001. However, this time limit will automatically stand extended as and when any adjournment application is granted made by either of the learned advocates appearing before the lower appellate court. It goes without saying that the advocates before us have agreed to cooperate the hearing and that they will not give any application unless reasons are beyond their control. With the aforesaid directions, the letters patent appeal stands disposed of.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

srilatha